

In the

SUPREME COURT OF MISSOURI

En Banc

Report of the Office of the Chief Disciplinary Counsel for the year
2023 together with the Financial Report of the Treasurer of the
Advisory Committee Fund for 2023

LAURA E. ELSBURY
Chief Disciplinary Counsel

IN THE
SUPREME COURT OF MISSOURI

EN BANC

REPORT OF THE OFFICE OF CHIEF DISCIPLINARY COUNSEL FOR THE YEAR
2023 TOGETHER WITH THE FINANCIAL REPORT OF THE TREASURER OF THE
ADVISORY COMMITTEE FUND FOR 2023

To the Honorable Judges of The Supreme Court:

Comes now the Office of Chief Disciplinary Counsel, and respectfully reports to the Court on matters concluded during calendar year 2023 or pending on December 31, 2023.

I.

THE FOLLOWING DISCIPLINARY ACTIONS WERE TAKEN BY THE COURT DURING 2023 BASED ON PROCEEDINGS PROSECUTED BY THE OFFICE OF CHIEF DISCIPLINARY COUNSEL¹

AMERINE, JASON CHRISTOPHER, Kansas City, MO, Missouri Bar #50857

Placed on probation until April 22, 2026: Violation of Rules 4-1.1, 4-1.2(c), 4-1.4(b), 4-1.5, 4-1.15, 4-3.3, and 4-5.1. Date of Order: May 23, 2023.

BENDER, PETER G., Springfield, MO, Missouri Bar #46976

Public Reprimand: Violation of Rules 4-1.7(a)(2) and 4-8.4(d). Date of Order: March 7, 2023.

BIAGI, HEATHER L., Edwardsville, IL, Missouri Bar #58566

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of two years: Rule 5.20 (Reciprocal – Illinois); Violation of Rules 4-5.5(a), 4-8.4(b), and 4-8.4(c). Date of Order: May 2, 2023.

BLACK, KEITH ALAN, St. Louis, MO, (now Eureka, MO), Missouri Bar #67527

Default suspension from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of two years: Violation of Rule 4-1.4. Date of Order: January 19, 2023.

BORICH III, JOSEPH R., Leawood, KS, Missouri Bar #23441

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of one year: Rule 5.20 (Reciprocal – Kansas); Violation of Rules 4-1.1, 4-1.2, 4-1.5(a), 4-1.5(c), 4-1.15(d), 4-1.16(a), 4-8.4(c), and 4-8.4(d). Date of Order: April 4, 2023.

¹ Often there are attorneys with the same or similar names. It is important to note the bar number and location of the individual.

CAMPBELL, BENJAMIN PATRICK, Joplin, MO, Missouri Bar #69450

Suspension, suspension stayed, placed on probation for five years: Violation of Rules 4-1.3, 4-1.4, 4-1.15(a), 4-1.15(a)(7), 4-1.15(d), 4-1.15(f), and 4-3.2. Date of Order: May 23, 2023.

Probation revoked. Suspended from the practice of law and no application for reinstatement shall be entertained by the Court for a period of two years. Date of Order: November 6, 2023.

COLBY, JULIANE L., Shawnee, KS, Missouri Bar #67525

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: March 7, 2023.

CORNACCHIONE, SR., DANIEL S., Caruthersville, MO, Missouri Bar #54935

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of six months: Violation of Rules 4-1.3, 4-1.4, 4-1.6(a), 4-1.15(a), 4-1.15(a)(7), 4-1.15(b), 4-1.15(c), 4-1.15(f), 4-3.2, 4-8.4(b), and 4-8.4(d). Date of Order: May 2, 2023.

COSTELLO, BRIAN, Kansas City, MO, Missouri Bar #52685

Disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.4(a)(1), 4-1.4(a)(2), 4-1.15(a), 4-1.15(a)(5), 4-1.16(c), 4-1.16(d), 4-3.2, 4-8.1(c), 4-8.2(a), 4-8.4(c), and 4-8.4(d). Date of Order: July 20, 2023.

CRABTREE, JAMES I., Hillsboro, MO, Missouri Bar #62551

Interim suspension from the practice of law pursuant to provisions of Rule 5.21. Date of Order: March 7, 2023.

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: May 2, 2023.

FAUSS, JASON, St. Louis, MO, Missouri Bar #57734

Suspension, suspension stayed, placed on probation for two years: Violation of Rules 4-1.4(b), 4-1.5(b), 4-1.15(a), 4-1.15(f), and 4-8.1(c). Date of Order: November 21, 2023.

FLUHR, AURORA MOZELLE, St. Louis, MO, Missouri Bar #52490

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-3.4(c), 4-8.1(c), and 4-8.4(d). Date of Order: May 23, 2023.

GARNER, TERRY L., Springfield, MO, Missouri Bar #64282

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: March 8, 2023.

GRAY, JR., CHARLES PATRICK, St. Louis, MO, Missouri Bar #47894

Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.4(a), 4-1.4(b), 4-1.15, 4-1.15(a), 4-1.15(c), 4-8.1(c), and 4-8.4(c). Date of Order: May 23, 2023.

HEATER, JEFFREY ALAN, St. Louis, MO, Missouri Bar #58609

Surrendered license and disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.15(a), 4-1.15(a)(7), 4-1.15(b), 4-1.15(f), and 4-1.16(d). Date of Order: March 23, 2023.

HOUGH, ROYA R., Kansas City, MO, Missouri Bar #41150

Default Disbarment: Violation of Rules 4-1.4, 4-1.16(d), 4-8.1(c), and 4-8.4(c). Date of Order: May 25, 2023.

JOY, J. MICHAEL, Lee's Summit, MO, Missouri Bar #21950

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.15, 4-1.15(a), 4-1.15(d), 4-1.16(d), and 4-8.1(c). Date of Order: November 14, 2023.

KAGAN, LENNY, Clayton, MO, Missouri Bar #52284

Disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.4, 4-1.15(a)(1), 4-1.15(a)(6), 4-1.15(a)(7), 4-1.15(c), 4-1.15(d), 4-1.15(f), 4-4.3, 4-4.4(a), 4-8.4(c), and 4-8.4(d). Date of Opinion and Mandate: October 3, 2023.

KLUSMEYER, AARON M., Springfield, MO, Missouri Bar #63006

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of one year: Rule 5.21 (Criminal Conviction). Date of Order: January 31, 2023.

KORT, ALLISON GREER, Kansas City, MO, Missouri Bar #70512

Interim suspension from the practice of law pursuant to provisions of Rule 5.24. Date of Order: June 20, 2023.

LONG, II, GARY W., Westwood, KS, Missouri Bar #38645

Disbarment: Rule 5.20 (Reciprocal – Kansas); Violation of Rules 4-1.3, 4-1.4(a), 4-1.15(f), 4-8.1(c), and 4-8.4(d). Date of Order: October 24, 2023.

LOVELAND, PATRICIA ANN BROCK, Neosho, MO, Missouri Bar #47315

Default Disbarment: Violation of Rules 4-1.1, 4-1.3, 4-1.4(a)(1), 4-1.4(a)(2), 4-1.4(a)(3), 4-1.4(b), 4-1.15(a), 4-1.16(d), 4-3.2, 4-3.4(c), 4-8.1(c), and 4-8.4(c). Date of Order: July 20, 2023.

MCCOLLUM, DAVID LEE, Liberty, MO, Missouri Bar #50726

Surrendered license and disbarment: Violation of Rules 4-1.15(a), 4-1.15(c), 4-1.15(d), and 4-8.4. Date of Order: March 15, 2023.

MCCORMICK, MATTHEW RYAN, Effingham, IL, Missouri Bar #70231

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of two years: Rule 5.20 (Reciprocal – Illinois); Violation of Rules 4-1.3, 4-1.4, and 4-8.4(c). Date of Order: June 28, 2023.

MARTINEZ, DANIEL J., Shawnee, KS, Missouri Bar #59134

Suspension, suspension stayed, placed on probation for two years: Rule 5.20 (Reciprocal – Kansas); Violation of Rules 4-1.1, 4-1.4(a), 4-1.4(b), 4-1.5(a), 4-1.15(a), 4-1.16(d), 4-3.4(c), 4-7.1, and 4-8.4(d). Date of Order: June 13, 2023.

MILLER, III, WILLIAM E., Alton, IL, Missouri Bar #33283

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: December 6, 2023.

MOORE, MARK QUENTIN, Chesterfield, MO, Missouri Bar #69622

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of six months: Rule 5.21 (Criminal Conviction). Date of Order: December 19, 2023.

PREWITT, PHILIP E., Macon, MO, Missouri Bar #40602

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of two years: Violation of Rules 2-1.2, 2-1.3, 4-1.9(c), 4-8.4(a), and 4-8.4(d). Date of Opinion and Mandate: March 2, 2023.

PURCELL, ANDREW D., St. Charles, MO, Missouri Bar #66165

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: October 24, 2023.

PURDY, DAN K., Osceola, MO, Missouri Bar #18694

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of twelve months: Violation of Rules 4-1.7(a)(2), 4-8.4(d), and 4-8.4(g). Date of Opinion and Mandate: April 6, 2023.

RENKEMEYER, TONY D., Leawood, KS, Missouri Bar #47371

Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: August 3, 2023.

STAPLEY, CHRISTOPHER V., Mesa, AZ, Missouri Bar #67595

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of three years: Rule 5.20 (Reciprocal – Arizona); Violation of Rules 4-1.3, 4-1.4(a), 4-5.5(a), 4-8.4(c), and 4-8.4(d). Date of Order: May 23, 2023.

SWAN, ERIC ANTHONY, Smithville, MO, Missouri Bar #58840

Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of three years: Rule 5.21 (Criminal Conviction). Date of Order: December 19, 2023.

**THOMPSON, LISA THERESA, St. Charles, MO, (now Hillsboro, MO),
Missouri Bar #46042**

Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-3.4(c), 4-8.1(c), and 4-8.4(d). Date of Order: May 2, 2023.

WEAVER, JR., THAYER LANCE, St. Louis, MO, Missouri Bar #48128

Suspension, suspension stayed, placed on probation for three years: Violation of Rules 4-1.15(a), 4-1.15(a)(5), 4-1.15(a)(6), 4-1.15(a)(7), 4-1.15(b), 4-1.15(c), 4-1.15(d), 4-1.15(f), and 4-8.4(c). Date of Order: March 7, 2023.

WYNNE, ANDREW GAVIN, St. Louis, MO, Missouri Bar #66415

Surrendered license and disbarment: Violation of Rule 4-8.4(c). Date of Order: August 15, 2023.

YOUNG, JOHN LUTHER, Springfield, MO, Missouri Bar #36718

Public Reprimand: Violation of Rule 4-3.3(a)(1). Date of Order: May 23, 2023.

II.

**THE FOLLOWING DISCIPLINARY ACTIONS WERE PENDING
BEFORE THE COURT AT THE CLOSE OF 2023 BASED ON PROCEEDINGS
PROSECUTED BY THE OFFICE OF
CHIEF DISCIPLINARY COUNSEL**

CRUMP, JAMES T., Rolla, MO, Missouri Bar #45999

(Disbarment: Violation of Rules 4-1.7(a), 4-1.8(a), 4-1.15(a), 4-1.15(a)(6), 4-1.15(a)(7), 4-1.15(b), 4-1.15(c), 4-8.4(c), and 4-8.4(d). Date of Opinion and Mandate: June 6, 2024.)

MARSHALL, MARK STEPHEN, St. Louis, MO, Missouri Bar #40515

(Disbarment: Rule 5.21 (Criminal Conviction). Date of Order: January 30, 2024.)

MERTA, CHELSEA KAY, St. Louis, MO, Missouri Bar #66876

(Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of six months: Violation of Rules 4-3.4(c), 4-8.4(c), and 4-8.4(d). Date of Order: March 13, 2024.)

NEILL, JOSEPH V., St. Louis, MO, Missouri Bar #28472

(Suspended from the practice of law and no petition for reinstatement shall be entertained by the Court for a period of six months: Violation of Rules 4-1.7(a)(2), 4-8.4(d), and 4-8.4(g). Date of Opinion and Mandate: January 25, 2024.)

SCANLON, CHARLES ROBERT, Chesterfield, MO, Missouri Bar #37338

(Disbarment: Rule 5.20 (Reciprocal – Illinois); Violation of Rules 4-1.15(a) and 4-8.4(c). Date of Order: January 30, 2024.)

STARK, CHRISTOPHER J., Springfield, MO, Missouri Bar #24570

(Default Disbarment: Violation of Rules 4-1.3, 4-1.4, 4-1.15, 4-1.16, 4-3.2, 4-8.1, and 4-8.4. Date of Order: January 23, 2024.)

WHITE, RICHARD FORREST, Kinder, LA, Missouri Bar #34509

(Disbarment: Rule 5.20 (Reciprocal – Louisiana); Violation of Rules 4-1.3, 4-1.4, 4-1.16(d), 4-3.4(c), 4-8.1(c), and 4-8.4. Date of Order: January 30, 2024.)

III. REINSTATEMENT PROCEEDINGS

A. DISCIPLINARY MATTERS

At the beginning of the year, 14 Missouri lawyers who had previously been disciplined had applications for reinstatement pending for processing by the Chief Disciplinary Counsel. During the year, three additional applications for reinstatement were filed and referred to the Chief Disciplinary Counsel for processing.

The OCDC processed a total of 17 disciplinary reinstatement applications during 2023. The status of those 17 applications is as follows:

Reinstated	1
Denied	1
Dismissed	1
Pending with OCDC	14

One Petitioner Was Reinstated By The Supreme Court

Ambry Nichole Schuessler (now Emanuel), St. Louis, MO, Missouri Bar #66214, reinstated on April 4, 2023. Petitioner was suspended on August 29, 2019.

One Petitioner Was Denied Reinstatement By The Supreme Court

Janise Nichole Lampley, Missouri Bar #65565, denied reinstatement. Petitioner was disbarred on December 9, 2015.

One Petition Was Dismissed By The Supreme Court

Jerry Jay Kruse, Missouri Bar #50768, Petitioner filed motion to withdraw petition for reinstatement on April 4, 2023. Petitioner was disbarred on November 9, 2005.

B. OTHER REINSTATEMENTS

Tax

Lawyers may be suspended for state tax issues under Rule 5.245. During 2023, the OCDC investigated and processed 12 tax suspension applications for reinstatement. Four were reinstated. Two applications were denied. Six applications remained pending at the end of 2023.

Fee

Lawyers may be suspended automatically under Rule 6.01(f) for non-payment of annual enrollment fees. If their non-payment exceeds three years, they must apply for reinstatement under Rule 5.28. In 2023, the OCDC investigated and processed 14 applications for reinstatement by those lawyers. Four were reinstated. One application was denied. Two applications were dismissed. Seven applications remained pending at the end of 2023.

MCLE

Lawyers may be suspended for non-compliance with Mandatory Continuing Legal Education requirements under Rule 15.06(f). During 2023, the OCDC investigated and processed 17 MCLE suspension applications for reinstatement. Five were reinstated. One application was dismissed. Eleven applications remained pending at the end of 2023.

Return to Active Status

Lawyers may elect to become inactive under Rule 6.03. Per Rule 6.06, the OCDC investigated and processed 87 inactive lawyers' applications for reinstatement. Seventy-eight were returned to active status. Seven applications were dismissed. Two applications remained pending at the end of 2023.

IV. COMPLAINTS RECEIVED IN 2023 AND ACTIONS THEREON

1,970 complaints of attorney misconduct were received in 2023.

The following actions were taken on complaints received in 2023:

- 522** Formal Investigations opened
 - 311** Cases investigated by Regional Disciplinary Committees
 - 211** Cases investigated by OCDC
- 66** Cases placed in the OCDC's Informal Resolution Program
[*See Paragraph A (below)]
- 1,291** Investigations not opened (*In certain instances, OCDC does not open an investigation until after related litigation is completed.*) Approximately 57 complaints were provided a further review and response following complainants' requests. Some of those reviews led to an investigation being opened.
- 74** Referred to Complaint Resolution Committee (**See Missouri Bar Complaint Resolution Activity Report attached.*)
- 17** Placed in "Inquiry" status (*These cases were not opened but were monitored to determine whether an investigation should be opened in the future.*)

A. Informal Resolution Program

In this program, intake counsel assigns appropriate cases to a paralegal to contact the complainant, the respondent, or both, to assist in resolving the complaint rather than proceeding with a formal investigation. The program is used most often in response to complaints that the client has not had adequate communication from the lawyer or where the client has been unable to obtain file documents. It may also be used in a case where the complainant has trouble articulating the nature of the complaint, or seems confused about the lawyer's responsibilities or the legal process. The program has been successful in reducing complaint processing time while preserving the attorney/client relationship. Most cases in the program were resolved without opening an investigation.

B. Advisory Committee Review

Rule 5.11 permits complainants to seek review by the Advisory Committee in cases in which the OCDC or a Regional Disciplinary Committee investigated and found insufficient probable cause to believe that an attorney was guilty of professional misconduct that would justify discipline. In 2023, 54 complainants requested review. The Advisory Committee upheld the findings on 30 of these files and issued a guidance letter to eight lawyers. The Committee assigned four of the review files for further investigation. Twelve of these review files were pending with the Committee at the end of the year.

C. Fee Disputes

The Missouri Bar continues to provide a fee dispute resolution program. This program is valuable to lawyers and legal consumers by providing a forum for fee-related complaints to be addressed through a non-disciplinary structure. During the year, 74 complainants were referred to the Fee Dispute Committee as appropriate.

D. Overdraft Notification

In 2010, the Supreme Court adopted an amendment to Rule 4-1.15 of the Rules of Professional Conduct that requires financial institutions holding lawyer trust accounts to notify the OCDC in cases where the trust account is overdrawn. In 2023, the OCDC received 52 overdraft notifications. Many of these involved negligent or careless management of trust accounts, which were often handled by education and follow-up monitoring without discipline. Some overdrafts were more serious, either by scope of the problem or by the intention of the attorney. Various levels of discipline were necessary in these matters in order to protect the public and the integrity of the profession.

V. DISCIPLINE ACTION INITIATED

A. Admonitions

The OCDC administered 44 written admonitions and the Regional Disciplinary Committees administered 27 written admonitions to Missouri lawyers. (Total: 71 admonitions). In addition, 137 guidance letters were sent to lawyers by OCDC and the Regional Committees. Guidance letters are not disciplinary action, but are used to educate the attorney on ethical responsibilities or to alert the attorney that a particular course of conduct, if unchecked in the future, may cause additional complaints to be filed.

B. Investigation Summary

Region	Investigations Pending 1/1/23	Investigations Referred 2023	Investigations Disposed in 2023
IV	54	111	80
X	73	114	116
XI	49	33	43
XV	76	69	87
OCDC	151	212	304

Region	Admonitions Issued in 2023	Guidance Letters Issued in 2023
IV	3	12
X	19	20
XI	1	9
XV	4	28
OCDC	44	68

C. Filed Hearing Matters

FILING INFORMATION

In 2023, the OCDC and the Regional Disciplinary Committees filed Informations (the formal charging document) on 37 files. “Files” indicate individual complaints against attorneys. An Information against one attorney may include charges involving multiple files.

Eighteen Informations, representing 46 complaint files, were pending before the Advisory Committee and Disciplinary Hearing Panels at the beginning of 2023. Disciplinary Hearing Panels conducted four hearings involving 10 files. Six default Informations were filed directly in the Supreme Court.

D. Cases filed at the Supreme Court

RULE 5.19

In 2023, four disciplinary hearing panel decisions were approved by the Missouri Supreme Court, pursuant to Rule 5.19(a), without requirement of briefing and argument.

Informant’s briefs were filed in the Supreme Court in five cases. Of those five cases, three were heard because the Respondent did not concur in a DHP’s recommended sanction (pursuant to Rule 5.19(b)), one was heard because neither party concurred in a DHP’s recommended sanction (pursuant to Rule 5.19(b)), and one was heard when the Court rejected the DHP’s recommended sanction (Rule 5.19(c)). Seven disciplinary cases appeared on the Court’s oral argument calendar in 2023.

RULE 5.20

Eight reciprocal discipline cases, based on adjudication of misconduct in other jurisdictions, were filed in 2023: *In re Biagi*, SC99954; *In re Borich*, SC99945; *In re Long*, SC100215; *In re McCormick*, SC100093; *In re Martinez*, SC100017; *In re Scanlon*, SC100356; *In re Stapley*, SC100044; and *In re White*, SC100379.

RULE 5.21

During 2023, one Information was filed under Rule 5.21(b) against an attorney who was subject to an interim suspension pending the final disposition of a criminal case: *In re Crabtree*, SC99937.

During 2023, one Information was filed under Rule 5.21(f) against an attorney whose criminal case was finally disposed, and who had previously been suspended on an interim basis: *In re Crabtree*, SC100020.

During 2023, Informations were filed under Rule 5.21(g) against seven attorneys whose criminal cases were finally disposed but who had not previously been suspended on an interim basis: *In re Garner*, SC99940; *In re Marshall*, SC100353; *In re Miller*, SC100311; *In re Moore*, SC100255; *In re Purcell*, SC100203; *In re Renkemeyer*, SC100134, and *In re Swan*, SC100323.

RULE 5.24

One Information requesting interim suspension for substantial threat of irreparable harm was filed in 2023: *In re Kort*, SC100127.

RULE 5.25

In 2023, three attorneys applied to surrender their license under Rule 5.25: *In re Heater*, SC99996 (accepted March 23, 2023); *In re McCollum*, SC99970 (accepted March 15, 2023; and *In re Wynne*, SC100113 (accepted August 15, 2023). The OCDC filed a Report and Recommendation in each of these cases.

VI. LAWYER MONITORING

OCDC staff monitor lawyers' practices in four circumstances, all intended to improve the lawyers' likelihood of maintaining a successful practice and protecting the public. In 2023, the office monitored 13 lawyers in the disciplinary diversion program established by Rule 5.105. The diversion program was created to help offenders who have engaged in relatively minor rule violations, often involving practice management.

Twenty lawyers were monitored in 2023 while on probation under Rule 5.175, the rule permitting probation for lawyers whose conduct did not warrant disbarment. Also, the office was asked by the Missouri Supreme Court and Missouri Board of Law Examiners in 2023 to monitor the practice of seven newly admitted lawyers. Finally, in 2023, the office monitored the practice of nine lawyers who were reinstated subject to an order of probation.

VII. UNAUTHORIZED PRACTICE OF LAW

The Office of Chief Disciplinary Counsel opened complaint files on eight individuals and organizations alleged to have engaged in the unlawful practice of law.

Some of these cases were referred to local prosecuting attorneys or to the Consumer Protection Division of the Missouri Attorney General's office. Others were resolved through communication with the company or individual.

Due to the workload and staff resources of OCDC, the office focused its efforts on conducting in-depth investigations in those cases where it appeared that widespread consumer fraud was occurring. Where appropriate, the office conducted investigations of complaints, and the office referred the materials to law enforcement for criminal prosecution as OCDC is only authorized to seek a civil injunction against a party for engaging in the unauthorized practice of law.

VIII. PRESENTATIONS BY OCDC STAFF

During 2023, OCDC staff gave presentations at Continuing Legal Education (CLE) seminars. The OCDC staff gave presentations to the following organizations: Bankruptcy Trustee Richard Fink; Bar Association of Metropolitan St. Louis; Catholic Foundation of NE Kansas; Chabad of Greater St. Louis; Cole County GAL Training; Fox Smith; Jasper County Bar Association; Kansas City Metropolitan Bar Association; Missouri Board of Law Examiners; Missouri Division of Workers' Compensation; National Organization of Bar Counsel; St. Joseph Bar Association; Springfield Metropolitan Bar Association; Stange Law Firm; United States District Court – Eastern District Trustee Panel; United States District Court – Western District of Missouri;

United States District Court – Western District Trustee Panel; and University of Missouri – Kansas City School of Law. The OCDC staff also spoke at several Missouri Bar telephone CLEs and webinars.

IX. SIGNIFICANT ACTIVITIES IN 2023

Disciplinary Case Processing

The Supreme Court has established timeline standards for the disposition of pending cases that seek to complete 75 percent of investigations within six months and 90 percent of investigations within one year. The Court has also established a timeline standard for the initial determination whether or not to open an investigative file that seeks to have new complaints and reports reviewed within two weeks of receipt. The Chief Disciplinary Counsel makes quarterly reports to the Court regarding the system's performance against the disposition timeline standards and the initial determination timeline standard. During 2023, the OCDC and the disciplinary system did not meet the disposition timeline standard in any quarter. However, the OCDC did meet its initial determination timeline standard in all but the first quarter of 2023.

Law Practice Management Course

For the past several years, with the support and approval of the Supreme Court, the OCDC has worked with The Missouri Bar to present a comprehensive program to address the issues raised by the lack of law practice management skills among a few members of the Bar whose clients have repeatedly complained about them. This cooperative effort resulted in the development of a practice management course staffed by a distinguished faculty of lawyers. In 2023, the course was offered as a full-day, in person session. Roughly 15 lawyers were in attendance.

Staff Training

In 2023, the OCDC attorney staff participated in training by attending conferences offered by The Missouri Bar, the National Organization of Bar Counsel and the American Bar Association – Center for Professional Responsibility. Paralegals at the OCDC attended sessions and presented training through the Missouri Paralegal Association and the Organization of Bar Investigators, an organization affiliated with the National Organization of Bar Counsel.

Supreme Court Rule 5

The Supreme Court entered an Order dated May 31, 2022, and effective January 1, 2023, repealing Rule 5 and adopting a new Rule 5, inclusive of Rule 5.01 – 5.34. The

Supreme Court of Missouri has repealed and adopted a new Rule 5 pertaining to attorney disciplinary matters. Rule 5 had not been revised significantly since its adoption in 1995. As the Court explained in a media release, these revisions were made in an effort to restructure the rule to reflect and clarify current disciplinary practices and procedures. The majority of changes to the rule are not substantive in nature. The changes include:

- Giving the chief disciplinary counsel and advisory committee the authority to issue guidance letters to attorneys regarding the rules of professional conduct despite a finding of insufficient probable cause;
- Allowing the chair of the advisory committee to exercise his or her discretion to permit the filing of an answer out of time upon a showing of excusable neglect;
- Authorizing hearings before a disciplinary panel to proceed virtually when in the public's best interest;
- Requiring Missouri-licensed attorneys to self-report within 10 days of being disciplined in another jurisdiction or pleading guilty to or being convicted of any crime;
- Requiring attorneys suspended or disbarred to wind up their law practices within 15 days of the suspension or disbarment order and submit to the Court a verified certificate of compliance attesting to complete performance of all obligations under the rule, including notification of clients and delivering their law licenses to the clerk of this Court;
- Increasing the fee for a reinstatement petition to \$1,000; and
- Clarifying that attorneys may provide confidential information to legal ethics counsel when seeking an informal ethics opinion, and legal ethics counsel has no duty to report possible Rule 4-8.3 violations when disclosures are made in the course of seeking an informal ethics opinion.

The full order, which took effect January 1, 2023, is available on the Missouri Courts website at <https://www.courts.mo.gov/page.jsp?id=187056>.

The Supreme Court entered an Order on November 11, 2022, and effective January 1, 2023, correcting provisions in the new Rule 5. Specifically, the Court corrected Rule 5.12(b) and Advisory Committee Regulation 5.31(d) to Rule 5.31.

Remote Public Access and Redaction Requirements

In orders dated June 28, 2022, January 31, 2023, and April 4, 2023, the Supreme Court of Missouri adopted new rules and operating rules providing for remote (online) public access to many records filed in Missouri courts. The rules became effective July 1, 2023. Under those rules, disciplinary and other cases filed in the Supreme Court after that date became more publicly accessible in that the public can generally view not only the docket entries (as previously permitted), but also the pleadings and materials filed in

those cases. Parties may still seek orders of protection for certain confidential records. Rules amended by those orders include: Court Operating Rule 2.02, Rule 19.10, Rule 55.025, and Rule 84.015.

Coincidental with increased public access provided by the new rules, the Court established responsibilities for lawyers who file documents in court to redact and seal confidential materials in Court Operating Rule 2.02.

On May 23, 2023, the Court revised Rule 5.31 to impose similar redaction requirements on lawyers (including disciplinary authorities) filing documents in disciplinary cases pending at the Advisory Committee. That rule also became effective on July 1, 2023.

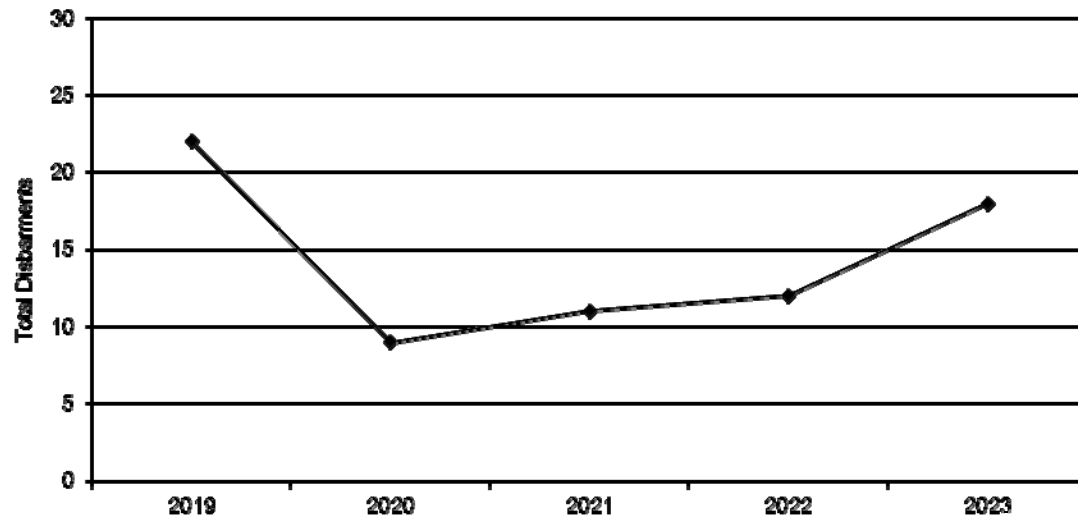
SUMMARY OF DISCIPLINE ACTIONS

During 2023:

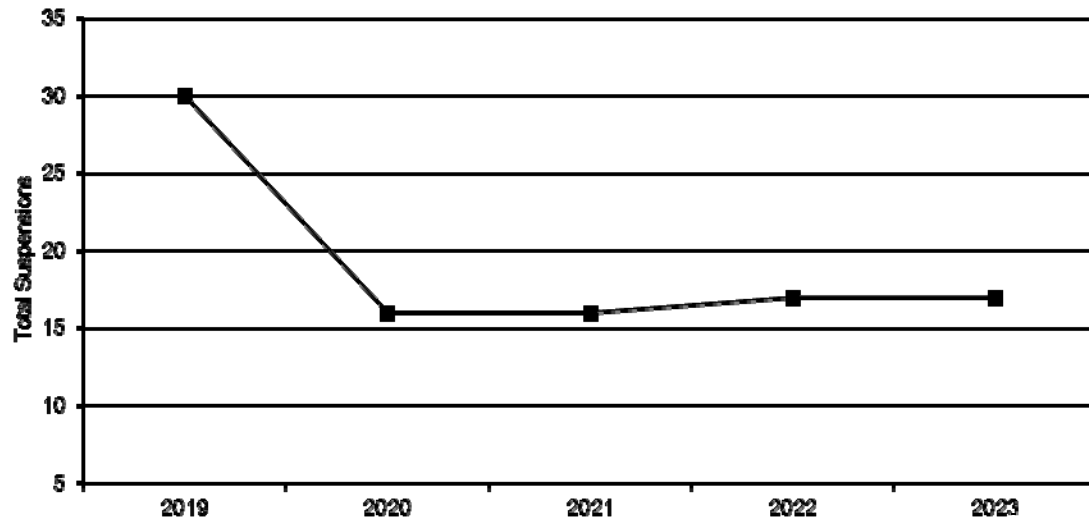
- **18** Eighteen lawyers were disbarred;
- **17** Seventeen lawyers were suspended; **four** of those suspensions were stayed and the attorneys were placed on probation with conditions;
- **1** One lawyer was placed on probation where no suspension was imposed;
- **12** Twelve lawyers were suspended pursuant to Rule 5.245 (Failure to Pay Tax);
- **2** Two lawyers received public reprimands; and
- **71** Seventy-one written admonitions were administered by the Regional Disciplinary Committees and the OCDC.

On occasion, other pending complaints against a lawyer are dismissed upon that lawyer's disbarment or suspension.

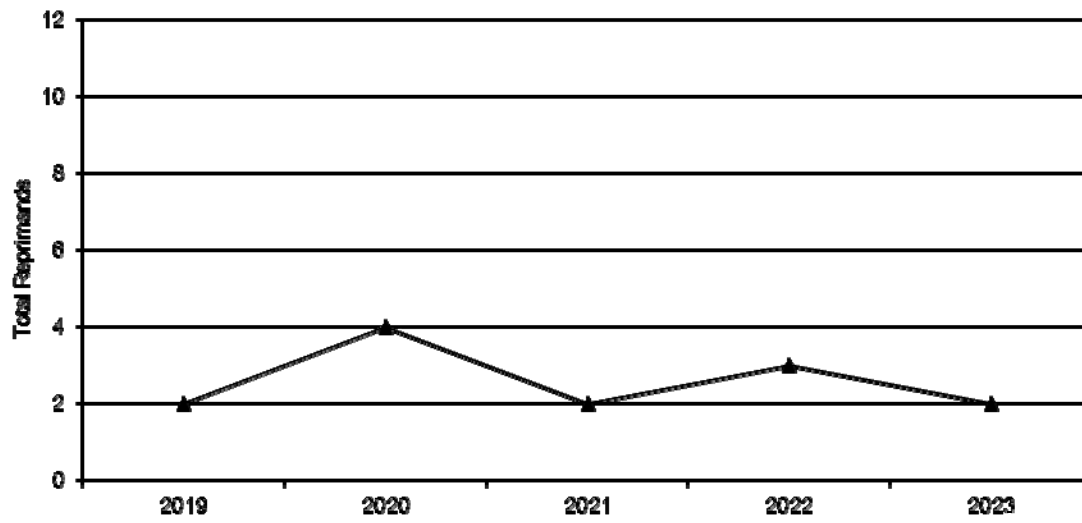
Disbarments



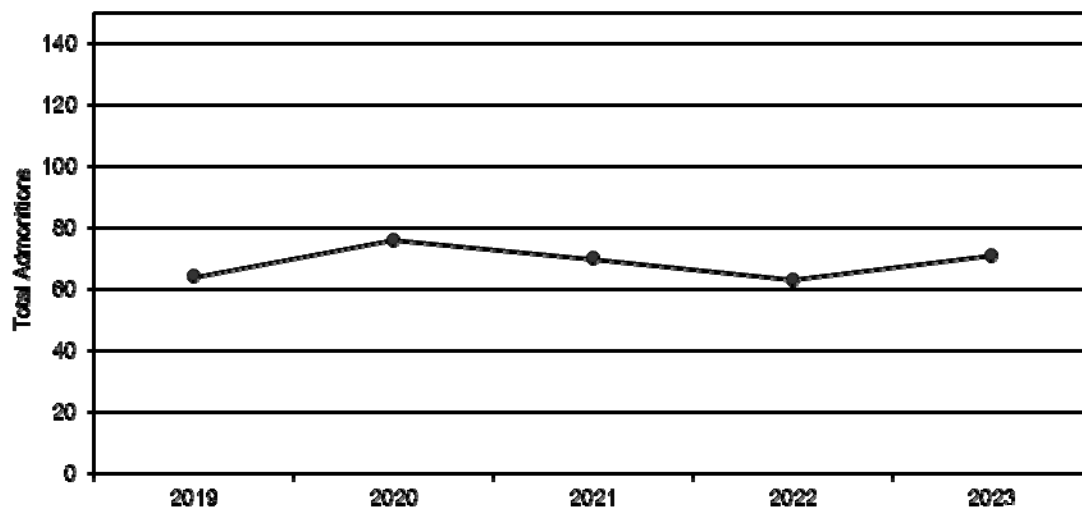
Suspensions

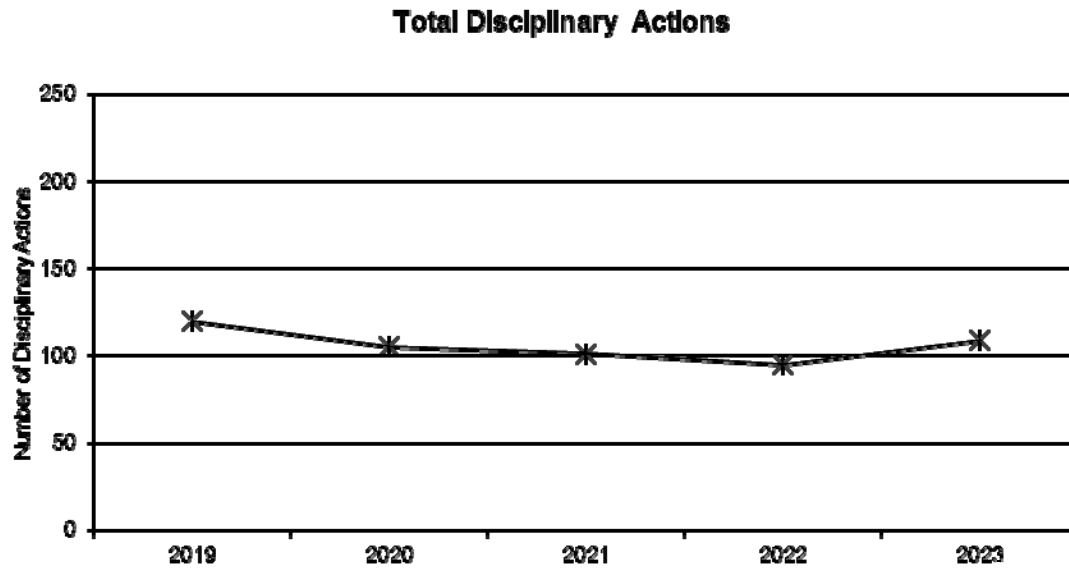


Reprimands



Admonitions





In 2023, there were a total of 109 disciplinary actions including admonitions and formal discipline matters.

The total number of complaints opened as formal investigations during 2023 was 522. The most common complaint areas are as follows:

NATURE OF VIOLATIONS *	NO.
Rule 4-1.4 (Communication)	320
Rule 4-1.3 (Diligence)	248
Rule 4-8.4(c) (Dishonesty, Fraud, Deceit, Misrepresentation)	130
Rule 4-1.5 (Excessive Fees)	124
Rule 4-1.16 (Improper Withdrawal)	75
Rule 4-1.15 (Safekeeping Property)	62
Rule 4-1.1 (Competence)	51
Rule 4-1.7 (Conflicts)	32
Rule 4-1.6 (Confidentiality)	28
Rule 4-3.3 (Truth to Tribunal)	15
Rule 4-8.4(b) (Criminal Activity)	13
Rule 4-4.1 (Truth to 3 rd Persons)	9
Rule 4-4.2 (Communication with Person Represented by Counsel)	9
Rule 4-3.4 (Obstruction/False Evidence)	8
Rule 4-5.5 (Unauthorized Practice)	8
Rule 4-5.3(b) (Supervisory Responsibility)	7
Rule 4-4.3 (Dealing with Unrepresented Person)	6
Rule 4-7.2 (Advertising)	6
Rule 4-1.2 (Client Directives)	4
Rule 4-8.4(g) (Bias)	4
Rule 4-1.16(a)(2) (Incapacitated Lawyer)	3
Rule 4-3.8 (Prosecutorial Responsibilities)	3
Rule 4-1.14 (Diminished Capacity)	2
Rule 4-8.1(c) (Failure to Cooperate)	2
Rule 4-3.6 (Trial Publicity)	1
Rule 4-8.2 Judicial and Legal Officials)	1

* Many complaints included more than one allegation.

The most prevalent practice areas which resulted in investigations are as follows:

AREA OF PRACTICE *	NO.
Criminal	126
Domestic	97
Litigation	71
Other	53
Torts	35
Real Property	31
Immigration/Naturalization	23
Estate/Probate	22
Bankruptcy/Receivership	15
Administrative/Governmental	10
Traffic	10
Guardianship	4
Juvenile	4
Contracts	3
Landlord/Tenant	3
Workers Compensation	3
Civil Rights	2
Corporate/Banking	1
Insurance	1

* Investigations involving trust account overdraft notifications made to the OCDC are not included in this tabulation.

Dated at the Office of Chief Disciplinary Counsel at Jefferson City, Missouri this 30th day of July, 2024.

Respectfully Submitted,

LAURA E. ELSBURY
Chief Disciplinary Counsel

LEGAL ETHICS COUNSEL ANNUAL REPORT FOR 2023

I. LEGAL ETHICS COUNSEL’S ROLE

A. Informal Advisory Opinions

Pursuant to Rule 5.30(c), the Legal Ethics Counsel issues nonbinding informal advisory opinions to members of the bar about Rules 4, 5, and 6.

The Office of Legal Ethics Counsel provided 1,193 oral informal advisory opinions via telephone. Many of these opinions involved multiple questions. Opinions given in conjunction with informal contact at bar meetings and CLE programs are generally not included in this count.

The Office of Legal Ethics Counsel provided 23 written informal advisory opinions.

The Advisory Committee authorized the publication of 10 new informal opinions. Pursuant to Rule 5.30, written summaries of select informal opinions provided by the Office of Legal Ethics Counsel are published for informational purposes for members of the bar. Informal opinions are advisory in nature and are not binding.

The Office of Legal Ethics Counsel is also conducting a comprehensive review of formerly published informal advisory opinions to ensure accuracy and relevance. This will be an ongoing project.

B. CLE Presentations

The Legal Ethics Counsel prepared and gave 14 CLE presentations for various groups including: American Bar Association, National Organization of Bar Counsel, Cole County Bar Association, The Missouri Bar, Bar Association of Metropolitan St. Louis, and Missouri Office of Prosecution Services. The Legal Ethics Counsel also moderated rebroadcasts of some of these CLE presentations.

II. ROLE OF THE LEGAL ETHICS COUNSEL TO THE ADVISORY COMMITTEE:

Rule 5.07(b) provides that the Legal Ethics Counsel shall serve as staff to the Advisory Committee.

A. Review Summaries

Pursuant to Rule 5.11, the Advisory Committee reviews investigation files if the OCDC or a Regional Disciplinary Committee finds insufficient probable cause and the complainant requests review. The Office of Legal Ethics Counsel summarized and distributed 54 review files to the Advisory Committee.

B. Hearings

The Office of Legal Ethics Counsel assisted Disciplinary Hearing Officers, as requested, with arrangements for hearings.

The Legal Ethics Counsel administered the hearing process to assist the Chair of the Advisory Committee in accordance with Rule 5.1255. As part of this process, the Legal Ethics Counsel proposed hearing panels, provided the file to the hearing panel once the panel was approved by the Chair, monitored the progress of the hearing, and assisted the hearing officers with issues that arose during the course of the process. 17 Informations were filed in 2023.

Rule 5.16 provides, in part:

(g) Review of Panel Decision for Compliance with Rule 5. The written decision of the disciplinary hearing panel shall be filed with the chair of the Advisory Committee. The chair shall review the panel's decision for the limited purpose of determining that the recommendation for discipline, if any, conforms to this Rule 5 and the sanctions established by the Court. If the chair of the Advisory Committee determines that the panel's recommendation does not conform, the chair shall direct the disciplinary hearing panel to reconsider its recommendation for discipline. After reconsideration, the panel shall file the revised written decision with the chair of the Advisory Committee.

(h) Service of Panel Decision. The chair of the Advisory Committee shall serve the written decision of the disciplinary hearing panel by first class United States mail, postage prepaid, on the respondent or the respondent's counsel if represented, the counsel for the informant, and the Chief Disciplinary Counsel.

The Legal Ethics Counsel performed the majority of these duties on behalf of, and in consultation with, the Chair.

The Legal Ethics Counsel prepared and presented an extensive training program for disciplinary hearing officers, and continually updates resources to assist disciplinary hearing officers.

The Court issued an Order comprehensively updating Rule 5, and the Legal Ethics Counsel made efforts to educate lawyers through CLEs, disciplinary hearing officers through training, and the public by updating information regarding the disciplinary hearing process on its website.

The Court updated Rule 5.31(b)(5), effective July 1, 2023, to require that “[a]ll pleadings and documents filed with the Advisory Committee or this Court shall be redacted in accordance with Rule 84.015. The responsibility for redacting such information rests solely with counsel, the parties, or any other person preparing, offering, or filing the document.” The Legal Ethics Counsel developed and implemented procedures to ensure disciplinary hearing matters are in compliance with this Rule.

C. Budget

The Legal Ethics Counsel prepared a proposed budget for the Advisory Committee and LEC office for 2024.

D. Meetings

The Office of Legal Ethics Counsel coordinated arrangements for regular Advisory Committee meetings. The Office of Legal Ethics Counsel prepared agendas, meeting materials and minutes for these meetings.

E. Formal Opinions

The Legal Ethics Counsel provided assistance to the Advisory Committee in relation to reviewing requests for formal opinions and possible appropriate topics for formal opinions in accordance with Rule 5.30(a).

F. Overdraft Reporting/Financial Institution Approval

Beginning January 1, 2010, Missouri attorneys were required to have their trust accounts at financial institutions “approved” by the Advisory Committee. In order to be approved, the financial institution must enter into an agreement to report insufficient funds situations that arise on attorneys’ trust accounts to the Office of Chief Disciplinary Counsel. The Legal Ethics Counsel handled issues related to bank name changes, mergers, etc., as they relate to approved status. The Legal Ethics Counsel maintained a list of approved banks on the office website.

G. Updated Website

In 2023, the Office of Legal Ethics Counsel launched a fully-revised website for the Office of Legal Ethics Counsel and Advisory Committee, www.mo-legal-ethics.org. The website now includes a new [Informal Opinions](#) searchable database, which replaces the former database long hosted by The Missouri Bar. There are now five ways to search or browse Informal Opinions:

1. By Informal Opinion Number (if you know the number of the opinion you are trying to locate, or want to see if an opinion has been cited in another opinion)
2. By Rule of Professional Conduct (if you want to see all of the Informal Opinions published on a specific Rule of Professional Conduct)
3. By Subject (if you want to look for an opinion on a topic, but are not sure of the Rule of Professional Conduct or Keywords)
4. By Year (see when opinions were published by year)
5. By Keyword (search by keywords)

This updated website has a number of other resources for lawyers, including links to Formal Opinions and applicable Rules, articles, a list of approved financial institutions to hold client trust accounts, and resource pages. [Resources pages](#) are compiled by the Legal Ethics Counsel to assist lawyers with frequent ethics questions, and include links to relevant Rules of Professional Conduct, Formal Opinions, Informal Opinions, disciplinary cases, articles, and FAQs on that topic. The website still includes a list of pending disciplinary matters, a calendar of upcoming disciplinary hearings, information on public access to disciplinary records pursuant to Rule 5.31.

H. Other matters

The Legal Ethics Counsel wrote articles for publication in the *Journal of the Missouri Bar*. Additionally, the Legal Ethics Counsel served on the Planning Committee for The Missouri Bar's Solo & Small Firm Conference and served as a member of the ABA Standing Committee on Ethics and Professional Responsibility starting in 2020 for a term until August 2023.